

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 11-N-16659-DFM
)	
WALTER CORTRIGHT APPLING,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 53078,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Walter Cortright Appling (Respondent) was charged with willfully violating California Rules of Court, rule 9.20, by willfully disobeying or violating a court order requiring compliance with rule 9.20. He failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if an attorney’s default is entered for failing to respond to the notice of disciplinary charges (NDC), and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney’s disbarment.²

¹ Unless otherwise indicated, all references to rules are to this source.

² If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied, and therefore, grants the petition and recommends that Respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on December 14, 1972, and has been a member since then.

Procedural Requirements Have Been Satisfied

On October 11, 2011, the State Bar filed and properly served the NDC on Respondent by certified mail, return receipt requested, at his membership records address. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The NDC was returned by the U.S. Postal Service (USPS) marked “PERSON HAS MOVED” and bearing the handwritten word “MOVED.”

Respondent had actual notice of this proceeding. On November 7, 2011, State Bar Deputy Trial Counsel Rosalba L. Gutierrez (DTC Gutierrez) spoke to Respondent by telephone. DTC Gutierrez explained to Respondent that his response to the NDC was due. Respondent asked what he was charged with, and DTC Gutierrez explained that the NDC charged him with one violation of California Rules of Court, rule 9.20, for failing to file his 9.20 declaration that was due on August 17, 2011. After stating that he was already suspended, Respondent hung up the telephone.

Respondent failed to file a response to the NDC. On November 22, 2011, the State Bar properly filed and served a motion for entry of Respondent’s default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel declaring the additional steps taken to provide notice to Respondent. (Rule 5.80.) The motion also notified Respondent that if he did not timely move to

set aside his default, the court would recommend his disbarment. Respondent did not file a response to the motion, and his default was entered on December 12, 2011. The order entering the default was properly served on Respondent at his membership records address by certified mail, return receipt requested. The court also ordered Respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent also did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On June 22, 2012, the State Bar filed and properly served the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) on June 13, 2012, Deputy Trial Counsel Katherine Kinsey (DTC Kinsey) and Respondent spoke by telephone. DTC Kinsey began to review some of the history of Respondent's matter, including that his default had been entered. However, Respondent interrupted to make it very clear that he did not care; he had not paid his dues; and he had surrendered his license. DTC Kinsey asked Respondent if he would be filing a motion to set aside the default and Respondent replied that he would not; (2) there are no other investigations or disciplinary matters pending against Respondent; (3) Respondent has a record of prior discipline; and (4) the Client Security Fund has not made payments resulting from Respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on August 20, 2012.

Respondent has been disciplined on two prior occasions.³ On May 19, 2009, the court filed an order imposing on Respondent a private reproof with conditions for one year. In this

³ The court admits into evidence the certified copy of Respondent's prior record of discipline that is attached as exhibits 1 and 2 to the State Bar's June 22, 2012 petition for disbarment.

matter, Respondent stipulated that he intentionally, recklessly or repeatedly failed to perform legal services and failed to respond promptly to reasonable client status inquiries.

Pursuant to a Supreme Court order filed on June 8, 2011, Respondent was suspended for two years, but the execution of the suspension was stayed subject to certain conditions, including that Respondent be suspended for a minimum of 90 days and that he remain suspended until he makes specified restitution and the court grants a motion to terminate his suspension.

Respondent was found culpable in this matter of failing to perform the conditions of his reprobation. Respondent failed to participate in this matter, and his default was entered.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of Respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that Respondent is culpable as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

Case Number 11-N-16659 (Rule 9.20 Matter)

Respondent willfully violated California Rules of Court, rule 9.20 (duties of disbarred, resigned or suspended attorneys), by not filing a declaration of compliance with rule 9.20 in conformity with the requirements of rule 9.20(c), and thereby failing to timely comply with the provisions of a Supreme Court order requiring compliance with California Rules of Court, rule 9.20.

Disbarment is Mandated under the Rules of Procedure

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and Respondent's disbarment must be recommended. In particular:

- (1) the NDC was properly served on Respondent under rule 5.25;

(2) Respondent had actual notice of this proceeding, as Respondent had a telephone conversation regarding this matter with DTC Gutierrez on October 11, 2011, and with DTC Kinsey on June 13, 2012;

(3) the default was properly entered under rule 5.80; and

(4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that Respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, Respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court must recommend his disbarment.

RECOMMENDATION

Disbarment

The court recommends that Respondent Walter Cortright Appling be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

The court also recommends that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Walter Cortright Appling, State Bar number 53078, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: November _____, 2012

DONALD F. MILES
Judge of the State Bar Court